

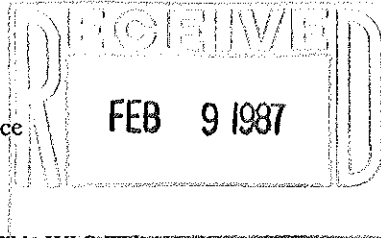
Before the
Federal Communications Commission
Washington, D.C. 20554

In re Complaint of

Illinois Safe Energy Alliance

against

Television Stations WGN-TV, WLS-TV,
and WMAQ-TV, Chicago, Illinois



STAFF RULING

Adopted: February 2, 1987

Released: February 5, 1987

By the Chief, Fairness/Political Programming Branch:

1. The Commission has before it a Fairness Doctrine complaint against Chicago television stations WGN-TV, WLS-TV, and WMAQ-TV, filed by the Illinois Safe Energy Alliance (ISEA). ISEA claims that these stations failed in their respective overall programming to afford reasonable opportunities for the presentation of views in contrast to those contained in two series of spot advertisements aired between July 1983 and July 1985. One series was sponsored by the United States Committee for Energy Awareness (USCEA) and the other was sponsored by Commonwealth Edison (CE).

2. ISEA identifies four issues addressed by these commercials which it claims espouse pro-nuclear points of view.¹ ISEA argues that four CE spots expressed views "concerning an issue of public importance, involving as they do questions of consumer costs for electricity." According to ISEA, the point of these spots is that CE's construction and operation of nuclear facilities are cost effective. ISEA suggests that CE was motivated to place these ads because there existed "active public debate" over CE's receipt of rate increases for construction of additional nuclear plants, the result of which is that "consumers in the stations' viewing area now pay the highest electricity rates in the midwest." ISEA contends that another CE spot takes a view on a second issue, "the training of nuclear plant personnel," and suggests that this spot intends to convey the view that "because [CE] plant operators are extensively trained, they 'do things right.'" ISEA asserts that a third issue, "the danger of radiation," is addressed from two perspectives during the series of spots sponsored by USCEA. In ISEA's view, one USCEA spot tries to convince the public that the operation of nuclear facilities is safe, and a second USCEA spot tries to convey the impression that nuclear waste can be disposed of safely. In effect, the complaint appears to treat the danger of radiation in plant operations and in waste disposal as separate issues.

3. With respect to the "cost" issue, ISEA argues that the existence of controversy and public importance is evidenced by "widespread coverage" by the media in the Chicago community throughout the time the USCEA and CE spots were broadcast.² ISEA adds that the debate has not been confined to media coverage, but is also evidenced by

the activities of certain governmental entities and public officials. In particular, ISEA claims that during the time the spots aired, CE was consistently charged with "over-estimating electricity demand forecasts (thereby costing billions of dollars in unnecessary nuclear construction)" by the Illinois Citizens Utility Board, the Governor's Office of Consumer Services, the Illinois Public Action Council, and numerous other unnamed city, state and federal officials. The complaint cites undated testimony before the Illinois Commerce Commission and a study by the Environmental Action Foundation as support for the contention that, in contrast to CE's views, alternative sources of electricity are considerably less expensive than nuclear. ISEA states that unnamed representatives of the city of Chicago have indicated that "citizens are losing jobs, businesses, and capital drained by [CE's] nuclear construction." ISEA also points out that an amendment to the Illinois Public Utilities Act, which proposed a cap on nuclear plant costs that could be borne by consumers, was defeated in the Illinois legislature by only one vote.

4. With regard to the "training" issue, ISEA argues that government action in the form of Nuclear Regulatory Commission (NRC) fines in 1984 against several CE nuclear plants demonstrates that CE employees are not well-trained. ISEA stated in connection with the "danger" issues, that there is debate in the scientific community concerning both the danger of radiation in nuclear plant operation and in the disposal of nuclear waste. ISEA notes that a NRC report to Congress in April 1985 placed the odds of a serious core damage accident, such as the one at Three Mile Island, at 45% over the next 20 years. With respect to USCEA's views in the "waste disposal" spot, ISEA claims that "scientists on all sides of the nuclear power controversy agree that no proven method currently exists for permanently disposing of this material."

5. In further support of the various allegations, ISEA claims that the stations' program logs and "monitoring" of each station by a "large number of people" demonstrate that the respective station's overall programming between January 1983 and September 1985 "has been essentially devoid of presentations of opposing points of view." Additionally, the complaint included correspondence between ISEA and the stations concerning ISEA's contention that each was acting in violation of the Fairness Doctrine.³ The complaint also included tables describing the frequency of "pro-nuclear advertising"; a list of "major community leaders and organizations who have specifically endorsed ISEA's work on the issue of fairness raised by the pro-nuclear ads"; a list of stations who granted ISEA fairness time "to balance pro-nuclear coverage"; the text and ISEA critiques of the spots; and, "monitoring documentation of the frequency of pro-nuclear ads."

6. In the stations' letter responses rejecting ISEA's contention that fairness obligations had been triggered by either USCEA's or CE's spots, and in the ongoing correspondence between ISEA and the stations, each broadcaster maintains that none of the spots about which ISEA complains expressed a view on any issue subject to the Fairness Doctrine. Rather, there is a consensus that the spots merely contained statements of fact which are intended to be informational and are not intended to convey particular points of view on any issue. Each station also refers to specific public affairs and news programming during which negative views concerning the issues ISEA described have been aired.⁴ Thus, in each station's view, even assuming any of the spots espoused a point of view

on an issue subject to the Fairness Doctrine, contrasting views sufficient to satisfy any fairness obligations have been reasonably presented. Finally, the stations question whether any of the identified issues were, in fact, subjects of controversy in Chicago at the time CE's or USCEA's spots aired.

DISCUSSION

7. The Fairness Doctrine requires broadcasters to inform the public by broadcasting discussions of controversial issues of public importance and, having presented one side of such an issue, to afford a reasonable opportunity for the presentation of contrasting points of view. *Fairness Report*, 48 FCC 2d 1, 9 (1974). It is the responsibility of the broadcaster to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue in its overall programming. Decisions as to what type of programming to present as well as the appropriate spokespersons to present a particular viewpoint are left to the journalistic discretion of the licensee. The Commission will review complaints, based on a broadcaster's alleged failure generally to present programming on controversial issues of public importance or its failure to provide reasonable opportunities for the presentation of contrasting views, to determine whether the broadcaster acted reasonably and in good faith.

8. Because of the sensitive First Amendment rights at stake, the Commission has formulated the required elements of a *prima facie* Fairness Doctrine complaint to ensure that broadcasters will not have to respond to frivolous, insufficiently documented, or poorly defined complaints. In short, a fairness complainant must first complain directly to the broadcaster(s) and include (i) the specific issue(s) broadcast, including an accurate summary of the views broadcast; (ii) the dates and times when the issue(s) was broadcast; (iii) the basis for the claim that the issue was controversial and of public importance; (iv) reasonable grounds for the claim that the station or network broadcast only one side of the issue(s) in its overall programming; (v) copies of correspondence between the complainant and the broadcaster; and (vi) whether the broadcaster has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints. *Procedure Manual*, 39 Fed. Reg. 32290 (1974); *Fairness Report*, 48 FCC 2d 1, 17 (1974).

9. The instant complaint is deficient in a number of respects. First, the complainant has failed to precisely identify the pertinent issues. Without such precision it is essentially impossible from a practical standpoint for the broadcaster or the Commission to know how compliance with the Fairness Doctrine can be demonstrated. Here, for instance, ISEA identifies as its first issue "questions of consumer costs for electricity." We cannot ascertain the issue from this description. Would any programming that dealt with the overall question of the cost of electricity suffice as being on one side or another of the area of consumer cost? In our view, it would be unduly burdensome for a station to be required to search its overall programming and try to ascertain which programming might be relevant. The same analysis is applicable to ISEA's second issue, "the training of nuclear plant personnel." This certainly does not represent a sufficiently precise issue. ISEA's identification of the "danger of radiation" is similarly imprecise. In this instance, however, the

complaint does attempt to describe with more particularity two subissues. Even here, though, no precise issue concerning "danger" with respect to either nuclear plant operation or nuclear waste disposal is provided. The Court in *American Security Council Educational Foundation v. FCC*, 609 F.2d 438, 451 (D.C. Cir. 1979), stated, regarding analogous circumstances, that:

Unless a broadcaster can recognize the issue "with precision and accuracy," [Citation omitted] proof of compliance with the Fairness Doctrine would require the production of "recordings or transcripts of all news programs, editorials, commentaries, and discussion of public issues, many of which are treated over long periods of time." [Citation omitted.] The Commission has wisely determined that imposition of such onerous burdens on broadcasters would, in practice, defeat the policy of "encouraging robust, wide-open debate." [Citation omitted.]

We can ascertain no basis for distinguishing the instant complaint from the Court's reasoning.

10. Second, assuming the issues had been properly identified, ISEA fails to provide sufficient material to establish that any of the issues were controversial in Chicago during the period the USCEA or CE spots aired. In defining "controversial," the Commission has stated that: [T]he licensee should be able to tell with a reasonable degree of certainty, whether an issue is the subject of vigorous debate with substantial elements of the community in opposition to one other." *Fairness Report*, *supra* at 12. In essence, this requires a complainant to show that "substantial elements," not merely a small segment of the community, were involved in "vigorous debate" on an issue during the time views on that issue were aired. The indicia recognized by the Commission to show such debate have included media coverage, which evidences a requisite level of debate in the community concurrent with the programming, and attention to an issue by government officials, legislators, and community leaders. The only media coverage ISEA refers to, however, is the bare assertion that "widespread" coverage of the "cost" issue took place from 1983-1985. No material such as newspaper clippings to support this claim is furnished, nor is any reference to media coverage of the remaining issues mentioned. With respect to ISEA's reference to the activities of governmental bodies, legislative activities, and attention of public officials and community leaders, it relates predominantly to the "cost" issue. The complaint provides no specific information concerning when the various agencies and governmental bodies which ISEA identified conducted hearings or other official activities concerning "cost." ISEA's reference to legislative activity, particularly the legislation to impose a cap on spending, is also bare, with no indication of when it occurred. The only indication of debate on the "training" issue is the reference to fines imposed by the NRC in 1984 against CE. Certainly this alone falls short of demonstrating requisite public debate on the issue. ISEA's contention that debate existed regarding both the issue of radiation danger in plant operation and in disposal of nuclear waste is supported only by the assertion that debate exists in the scientific and public health sectors. Debate within the scientific community or any specialized segment of the community, however, is insufficient to establish that such debate exists to a substantial degree within the general broadcast community. In sum, there is a lack of specificity and documentation

sufficient to establish the existence of the requisite level of debate in Chicago regarding any of the issues at the times that either the CE or USCEA spots were broadcast.

11. Third, in attempting to establish reasonable grounds for the claim that the station broadcast only one side of the issue(s) in its overall programming, the complaint fails to specify what is meant by its reference to an ISEA "monitoring project." While the Commission does not require a complainant to listen, to view, or to monitor a station's programming around the clock, complainants are required to "specify the nature and extent of the viewing or listening habits." *Fairness Report, supra* at 12; *The Conservative Caucus*, 94 FCC 2d 728, 732 (1983); *John Howard*, 55 FCC 2d 777, 780-81 (1975). There is no indication, for example, of the extent of ISEA's monitoring of news, public affairs, or any other category of programming. Although the complaint refers to news segments aired by each station that apparently dealt with various aspects of nuclear energy, without further explanation it appears that much of the monitoring focused upon each station's broadcast of editorial advertising. In this connection, the monitoring exhibit to the complaint includes only the frequency and placement of CE and USCEA advertising. In fact, the only specific indication of the extent of ISEA's monitoring is the statement that it occurred between January 1983 and September 1985. The complaint also indicates that in addition to ISEA's monitoring, a review of "program logs" supports its overall programming allegation. However, the Commission has never required, nor is it aware of, the maintenance of program logs that describe in sufficient enough detail the specific content of any program.

12. Finally, ISEA's correspondence with the individual stations evidences a failure to provide the broadcasters with the elements of a *prima facie* complaint outlined above. As we explained at the outset of this discussion, the Commission will not entertain a fairness complaint unless the broadcaster is first provided with the specific information required for a *prima facie* showing. In this way the Commission is assured that any possible resolution of a fully-defined complaint has been explored with the broadcaster prior to the time the Commission's intervention is sought. This procedure also accords the broadcaster the opportunity to explain in response to a sufficiently detailed complaint what programming on a particular issue has been aired and what plans, if any, the station may have already conceived for future programming.

13. In the final analysis it is not a question of whether any of the stations may have erred in their characterization of the discussion presented by the advertisements, nor is it relevant that other stations accepted ISEA's rebuttal advertisements or scheduled additional programming that satisfied ISEA. Individual stations may reach different conclusions concerning the same broadcast material. Ultimately, each licensee's characterization of a broadcast will govern unless the facts are so clear that the only reasonable conclusion would be that the broadcast presented, in an obvious and meaningful fashion, one side of a controversial public issue. *Georgia Power Project v. FCC*, 559 F.2d 237 (D.C. Cir. 1977).

14. Accordingly, no further action on ISEA's complaint is warranted.

15. Staff action is taken here under delegated authority. Application for Review by the full Commission may be requested within thirty days of the date of public notice of this document (see Commission Rule 1.4(b) [47 C.F.R.

Section 1.4(b)] by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. See Commission Rule 1.115 (47 C.F.R. Section 1.115).

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief
Fairness/Political Programming Branch
Enforcement Division
Mass Media Bureau

FOOTNOTES

¹ ISEA's complaint was not especially clear in identifying the individual issues, and thus it was difficult to analyze this aspect of the complaint. The implication of this lack of clarity is set forth in the "Discussion" section below.

² ISEA indicates that, if requested, it would provide copies of various articles on the "cost" issue.

³ The correspondence commenced in March 1983, when ISEA made its first request of each station for time under the Fairness Doctrine. Correspondence between ISEA and each station apparently continued until April 1986. There are unexplained lapses between June 1983 and February 1984 and between March 1984 and September 1985 when no correspondence between the parties is evident from the information before us.

⁴ For example, WMAQ-TV lists and describes twenty-seven separate news and public affairs segments aired concurrent in time with the CE and USCEA spots and during which it claims negative views on various aspects of nuclear energy aired. WLS-TV claims that in 1982 alone it aired in excess of thirty local news stories on nuclear energy, "including stories on radiation released at Three Mile Island, natural gas, energy research, [and] anti-nuke projects. . . ."

